Gevolgen klimaatverandering en recht op leven: terugzenden mag

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voor de toepassing van die bepalingen als aparte landen gezien moesten worden.
Bij de laatste poging om een wettelijke regeling voor toelating en uitzetting van Antilliaanse Nederlanders te treffen, in 2014, beriep de indiener zich nog expliciet op deze verklaring (*Kamerstukken II* 2011/12, 33325, nr. 3, p. 5). Dat voorstel werd in 2016 door de Tweede Kamer verworpen. Nederland was vóór Brexit al de enige lidstaat van de EU en van de Raad van Europa die de mogelijkheid om eigen staatsburgers te weren wilde openhouden. Gezien de ontwikkeling van het internationale recht in de afgelopen decennia is moeilijk vol te houden dat de Nederlandse verklaringen uit begin jaren tachtig nog in overeenstemming met het geldende recht zijn, zie Commissie Meijers, Notitie over het wetsvoorstel Bosman (VVD) tot regulering van de vestiging van Nederlanders van Aruba, Curaçao en Sint Maarten in Nederland, februari 2014, CM1401. Het Vierde Protocol en het EU Werkingsverdrag werden tussen staten gesloten, maar ze scheppen beide rechten waarop ook individuele burgers zich kunnen beroepen. Na bovenstaand arrest is duidelijk dat het ontzeggen aan Nederlanders van het recht op toegang tot en verblijf in Nederland 'op welke grond ook' niet alleen strijdig is met internationaal recht maar ook met Unierecht. Gezien het onderwerp van dit arrest geldt dat niet alleen voor Nederlanders die gebruik maakten van het vrij verkeer binnen de Unie, maar ook voor 'statische' en voor Antilliaanse Nederlanders. Beide categorieën zijn immers ook Unieburgers.

Gezinshereniging van eigen burgers
De aanleiding voor dit arrest is een goede illustratie voor het verschil in behandeling van gezinshereniging van eigen burgers in Nederland en in andere EU-lidstaten. In het Spaanse recht wordt de regeling van de Unieburgersrichtlijn 2004/38/EG naar analogie toegepast op gezinshereniging met familieleden van Spanjaarden. In Nederland gelden voor hereniging met Nederlanders de veel minder gunstige regels voor gezinshereniging van derdelanders uit Richtlijn 2003/86/EG, zie de arresten *C en A* (HvJ EU 7 november 2018, C-257/17, ECLI:EU:C:2018:876, «JV» 2019/2, m.nt. De Vries), *K en B* (HvJ EU 7 november 2018, C-380/17, ECLI:EU:C:2018:877, «JV» 2019/3, m.nt. Strik) en *G.S. en V.G.* (HvJ EU 12 december 2019, C-381/18 en C-382/18, ECLI:EU:C:2019:1072, «JV» 2020/35, m.nt. Wijngaarden). Overigens hebben Nederlanders de analoge toepassing van die regels te danken aan het arrest *Chakroun* (4 maart 2010, C-578/08, «JV» 2010/177, m.nt. Groenendijk). Na dat arrest was het politiek niet langer houdbaar voor Nederlanders strengere eisen te handhaven dan die volgens Richtlijn 2003/86/EG voor derdelanders gelden. In Duitsland, waar het recht van Duitsers om in het land te verblijven in art. 11 Grundgesetz wordt gegarandeerd, vormde dat recht voor het Bundesverwaltungsgericht de grondslag om te oordelen dat bij de gezinshereniging met een Duitse burger de taaltest in het buitenland ten hoogste tot een uitstel van de hereniging met een jaar zou mogen leiden, BVerwG 4 september 2012, ve12001866, punt 28. Het liberale zelfbeeld van Nederland blijkt in het migratierecht niet altijd in overstemming met de feiten. Nederlanders komen er in vergelijking met burgers van andere lidstaten nog steeds bekaaid vanaf.

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Gevolgen klimaatverandering en recht op leven; terugzenden mag.

Mensenrechtencomité -VN
7 januari 2020, CCPR/C/127/D/2728/2016
(Abdo Rocholl, Ben Achour, Brends Kehris, Arif Bulkan, Amin Fathalla, Furuya, Heyns, Koita, Kran, Laki Muhumuza, Pazartzis, Quezada Cabrera, Sancin, Santos Pais, Shany, Tigroudja, Zimmermann, Zyberi)
Noot mr. dr. E.R. Brouwer

Uitzetting. Kirabati. Non-refoulement. Recht op leven.

[IVBPR art. 6]

Klager stelt dat door klimaatverandering de zeespiegel is gestegen waardoor hij is gedwongen om zijn eiland Tarawa in de republiek Kiribati in de Stille Oceaan te verlaten, omdat zoet water schaars is geworden en ten gevolge van zout wa-

ter het land grotendeels onbewoonbaar is geworden. Klager heeft asiel aangevraagd in Nieuw-Zeeland.
Het Comité overweegt in het kader van de ontvankelijkheid van de klacht dat om de status van slachtoffer te verkrijgen sprake moet zijn van een onmiddellijk dreigend gevaar op moment van uitzetting. De klacht betreft geen hypothetische toekomstige omstandigheid, maar een werkelijk moeilijk probleem veroorzaakt door gebrek aan zoet water, gebrek aan arbeidsmogelijkheden en een dreiging van geweld veroorzaakt door twisten over grond. Gelet op deze informatie heeft klager voldoende aangetoond dat sprake is van een onmiddellijke dreiging in geval van uitzetting naar Kiribati. Art. 1 en 2 Optioneel protocol bieden geen beletsel voor de ontvankelijkheid (punt 8.5-8.6).
De plicht om niet uit te zetten in de zin van art. 6 IVBPR is ruimer dan de ruimte die het beginsel van non-refoulement biedt onder het internationale vluchtelingenrecht (punt 9.3). Hoewel het Immigration and Protection Tribunal oordeelde dat klagers relaas volledig geloofwaardig is en het bewijs is geaccepteerd, was het van oordeel dat geen sprake was van een reëel en onmiddellijk risico op een willekeurig verlies van recht op leven bij terugkeer naar Kiribati. Met name was niet aangetoond dat a. klager was verwikkeld in een twist over land of daar in verwikkeld zou raken in de toekomst; b. hij niet de mogelijkheid zou hebben land te vinden voor woonruimte voor hemzelf en zijn gezin; c. hij geen voedsel zou kunnen verbouwen of toegang zou hebben tot drinkwater; d. hij levensbedreigende milieuomstandigheden zou ondervinden; e. zijn situatie materieel anders was van die van iedere ander inwoner van Kiribati of f. de regering van Kiribati faalde om plannen te ondernemen om te zorgen voor de noodzakelijke basis waarin klager zijn recht op leven kan uitoefenen. De regering had hiertoe stappen ondernomen gelet op het National Adaptation Programme of Action van 2007 (punt 9.6).
Het Comité accepteert klagers stelling dat door de stijging van de zeespiegel Kiribati mogelijk onbewoonbaar kan worden. Echter, de tijdsperiode van tien tot vijftien jaar biedt de regering van Kiribati mogelijkheden om met de hulp van de internationale gemeenschap maatregelen te nemen ter bescherming van de gemeenschap en waar nodig verplaatsing van de bevolking. De zaak is door de autoriteiten grondig onderzocht en Kiribati neemt maatregelen om problemen te voorkomen. Gebaseerd op de overgelegde informatie is het Comité niet in een positie om te concluderen dat de toets van de autoriteiten dat de maatregelen genomen door de regering van Kiribati voldoende zijn om klagers recht op leven in de zin van art. 6 IVBPR te beschermen willekeurig is of leiden tot een schending van recht. In het licht van de bevindingen heeft het Tribunaal een individuele toets gehanteerd en alle elementen meegenomen die zijn aangedragen door klager toen hij een risico op uitzetting naar Kiribati vreesde in 2015. Het Comité overweegt dat hoewel klager het niet eens is met de feitelijke conclusies van de tegenpartij, de informatie niet getuigt dat de juridische procedure in klagers zaak willekeurig was of fout of een flagrante schending van recht. En ook niet dat de rechtbanken anderszins hun verplichting van onafhankelijkheid of onpartijdigheid hebben geschonden. Zonder vooroordeel over de blijvende verantwoordelijkheid van de regering van Kiribati om in de toekomst in zaken van uitzetting de actuele situatie in Kiribati mee te nemen en nieuwe en geüpdatete data over klimaatverandering en effecten van stijging van de zeespiegel daarbij te betrekken is het Comité niet in de positie om te oordelen dat klagers recht onder art. 6 IVBPR is geschonden door zijn uitzetting naar Kiribati in 2015 (punt 9.12-9.14).
Het Comité oordeelt dat de feiten niet tot de conclusie leiden dat klagers uitzetting naar Kiribati een schending oplevert in de zin van art. 6 lid 1 IVBPR.

I.T.
tegen
Nieuw-Zeeland

1.1. The author of the communication is Ioane Teitiota, a national of the Republic of Kiribati born in the 1970s. His application for refugee status in New Zealand was rejected. He claims that the State party violated his right to life under the Covenant, by removing him to Kiribati in september 2015. The Optional Protocol entered into force for the State party on 26 August 1989. The author is represented by counsel.
1.2. On 16 February 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to request the State party to refrain from removing the

author to the Republic of Kiribati while the communication was under consideration by the Committee.

Factual background

2.1. The author claims that the effects of climate change and sea level rise forced him to migrate from the island of Tarawa in the Republic of Kiribati to New Zealand. The situation in Tarawa has become increasingly unstable and precarious due to sea level rise caused by global warming. Fresh water has become scarce because of saltwater contamination and overcrowding on Tarawa. Attempts to combat sea level rise have largely been ineffective. Inhabitable land on Tarawa has eroded, resulting in a housing crisis and land disputes that have caused numerous fatalities. Kiribati has thus become an untenable and violent environment for the author and his family.

2.2. The author has sought asylum in New Zealand, but the Immigration and Protection Tribunal issued a negative decision concerning his claim for asylum. Still, the Tribunal did not exclude the possibility that environmental degradation could "create pathways into the Refugee Convention or protected person jurisdiction." The Court of Appeal and the Supreme Court each denied the author's subsequent appeals concerning the same matter.

2.3. In its decision of 25 June 2013, the Immigration and Protection Tribunal first examined in detail the 2007 National Adaptation Programme of Action filed by the Republic of Kiribati under the United Nations Framework Convention on Climate Change. As described by the Tribunal, the National Adaptation Programme of Action stated that the great majority of the population had subsistence livelihoods that were heavily dependent on environmental resources. The Programme of Action described a range of issues that had arisen from the existing and projected effects of climate change-related events and processes. Among the effects of climate change, coastal erosion and accretion were most likely to affect housing, land and property. In South Tarawa, 60 sea walls were in place by 2005. However, storm surges and high spring tides had caused flooding of residential areas, forcing some to relocate. Attempts were being made to diversify crop production, for example, through the production of cash crops. Most nutritious crops were available and could be prepared into long-term preserved food. However, the health of the population had generally deteriorated, as indicated by vitamin A deficiencies, malnutrition, fish poisoning, and other ailments reflecting the situation of food insecurity.

2.4. The Tribunal next considered the expert testimony of John Corcoran, a doctoral candidate researching climate change in Kiribati at the University of Waikato in New Zealand. Mr. Corcoran, a national of the Republic of Kiribati, characterized the country as a society in crisis owing to climate change and population pressure. The islands constituting the country rose no more than three meters above sea level. Soils were generally poor and infertile. Unemployment was high. The population of South Tarawa had increased from 1,641 in 1947 to 50,000 in 2010. In Tarawa and certain other islands of Kiribati, the scarcity of land engendered social tensions. Violent fights often broke out and sometimes led to injuries and deaths. Rapid population growth and urbanization in South Tarawa had compromised the supply of fresh water. No island in Kiribati had surface fresh water. As a result of the increase in population, the rate of water extraction from the freshwater lens exceeded the rate of its replenishment through the percolation of rainwater. Waste contamination from Tarawa had contributed to pollution of the freshwater lens, rendering some of the five underground water reserves unfit for the supply of fresh drinking water. Increasingly intense storms occurred, submerging the land in certain places on South Tarawa and rendering it uninhabitable. This often occurred three or four times a month. Rising sea levels caused more regular and frequent breaches of sea walls, which were in any case not high enough to prevent saltwater intrusion over the land during high tides. Household wells in high-density housing areas could not be used as a water supply due to increasing contamination, and rainwater catchment systems were only available in homes constructed of permanent materials. Thus, approximately 60 per cent of the population of South Tarawa obtained fresh water exclusively from rationed supplies provided by the public utilities board. Trash washed onto the beach posed health hazards for local landowners. According to Mr. Corcoran, the Government of the Republic of Kiribati was taking some steps to address this. It had a Program-

me of Action in place to help communities adapt to climate change.[1]

2.5. Next, the Tribunal examined the testimony given by the author during the appeal hearing. According to the Tribunal's description of the testimony, the author was born on an islet situated north of Tarawa, a journey of several days away by boat. He completed secondary school and obtained employment for a trading company, which ended in the mid-1990s when the company folded. He had not been able to find work since then. In 2002, the author and his wife moved in with his wife's family in a traditionally-constructed dwelling in a village in Tarawa. The dwelling was situated on ground level and had electricity and water but no sewage services. Beginning in the late 1990s, life progressively became more insecure on Tarawa because of sea level rise. Tarawa became overcrowded due to the influx of residents from outlying islands, because most government services, including those of the main hospital, were provided on Tarawa. As villages became overcrowded, tensions arose. Also beginning in the late 1990s, Tarawa suffered significant amounts of coastal erosion during high tides. The land surface regularly flooded, and land could be submerged up to knee-deep during king tides. Transportation was affected, since the main causeway separating north and south Tarawa was often flooded. The situation caused significant hardship for the author and other inhabitants of Tarawa. The wells on which they depended became salinized. Salt water was deposited on the ground, resulting in the destruction of crops. The land was stripped of vegetation in many places, and crops were difficult to grow. The author's family relied largely on subsistence fishing and agriculture. The sea wall in front of the author's in-laws' home was often damaged and required constant repair. The author and his wife left the Republic of Kiribati for New Zealand because they wished to have children, and had received information from news sources that there would be no future for life in their country. The author accepted that his experiences were common to people throughout the Republic of Kiribati. He believed that the country's Government was powerless to stop the sea level rise. Internal relocation was not possible. The author's parents lived on Tarawa but faced similar environmental and population pressures.

2.6. The Tribunal also considered the oral testimony of the author's wife. According to the Tribunal, she testified that she was born in the late 1970s on Arorae Island, in the south of the Republic of Kiribati. In 2000, her family moved to Tarawa. She married the author in 2002. Her parents' house there was situated on the edge of a sea wall. The house and land were not owned by her parents but belonged to a neighbor. Since her arrival in New Zealand, the neighbor had passed away, and his children had been demanding that her family vacate the house. Her family was supported financially by one of her brothers, who had obtained employment in South Tarawa. If the family were obligated to vacate the house, they would have to travel back to Arorae Island and settle on a small plot of land. She was concerned for the family's health and well-being. The land was eroding due to the effects of sea level rise. The drinking water was contaminated with salt. Crops were dying, as were the coconut trees. She had heard stories of children getting diarrhea and even dying because of the poor quality of the drinking water. Land was becoming very overcrowded, and houses were close together, which led to the spread of disease.

2.7. The Tribunal also considered many supporting documents submitted by the author, including several scholarly articles written by United Nations entities and experts. The Tribunal analyzed whether the author could qualify as a refugee or a protected person under the Refugee Convention, the Convention against Torture, or the Covenant. It found the author entirely credible. It noted that the carrying capacity of the land on the Tarawa atoll had been negatively impacted by the effects of population growth, urbanization, and limited infrastructure development, particularly in relation to sanitation. These impacts had been exacerbated by both sudden-onset environmental events, such as storms, and slow-onset processes, such as sea level rise. The Tribunal noted that the author had been unemployed for several years before arriving in New Zealand, and had relied on subsistence agriculture and fishing, while receiving financial support from his wife's brother. The

1 Mr. Corcoran's written report was provided with the author's comments. Entitled "Evidence of climate change impacts in Kiribati," it includes photographs depicting, inter alia, flooding of homes after high tides, land with limited vegetation, a breached sea wall, and trash washed onto a beach.

Tribunal noted the author's statement that he did not wish to return to the Republic of Kiribati because of the difficulties he and his family faced there, due to the combined pressures of overpopulation and sea level rise. The house they were living in on South Tarawa was no longer available to them on a long-term basis. Although the couple's families had land on other islands, they would face similar environmental pressures there, and the land available was of limited size and was occupied by other family members.

2.8. After a lengthy analysis of international human rights standards, the Tribunal considered that "while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case." After further examination, the Tribunal concluded that the author did not objectively face a real risk of being persecuted if returned to Kiribati. He had not been subjected to any land dispute in the past and there was no evidence that he faced a real chance of suffering serious physical harm from violence linked to housing/land/property disputes in the future. He would be able to find land to provide accommodation for himself and his family.[2] Moreover, there was no evidence to support his contention that he was unable to grow food or obtain potable water. There was no evidence that he had no access to potable water, or that the environmental conditions that he faced or would face on return were so perilous that his life would be jeopardized. For these reasons, he was not a "refugee" as defined by the Refugee Convention.

2.9. Regarding the Covenant, the Tribunal noted that the right to life must be interpreted broadly, in keeping with the Committee's general comment No. 6 (1982) on article 6. The Tribunal cited academic commentary stating that under article 6, an arbitrary deprivation of life involves an interference that is: (a) not prescribed by law; (b) not proportional to the ends sought; and (c) not necessary in the particular circumstances of the case.[3] On this basis, the Tribunal accepted that the right to life involves a positive obligation of the state to fulfil this right by taking programmatic steps to provide for the basic necessities for life. However, the author could not point to any act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 of the Covenant. The Tribunal considered that the Government of Kiribati was active on the international stage concerning the threats of climate change, as demonstrated by the 2007 Programme of Action. Moreover, the author could not establish that there was a sufficient degree of risk to his life, or that of his family, at the relevant time. Quoting the Committee's jurisprudence in *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), the Tribunal stated that under the Optional Protocol, the risk of a violation of the Covenant must be "imminent." This means that the risk to life must be, at least, likely to occur. No evidence was provided to establish such imminence. The Tribunal accepted that, given the greater predictability of the climate system, the risk to the author and his family from sea level rise and other natural disasters could, in a broad sense, be regarded as more imminent than the risk posed to the life of the complainants in *Aalbersberg et al v. the Netherlands*. However, the risk to the author and his family still fell well short of the threshold required to establish substantial grounds for believing that they would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. This risk remained firmly in the realm of conjecture or surmise. There was no evidence establishing that his situation in the Republic of Kiribati would be so precarious that his or his family's life would be in danger. The Tribunal noted the testimony of the author's wife that she feared her young children could drown in a tidal event or storm surge. However, no evidence had been provided to establish that deaths from such events were occurring with

2 The Tribunal noted that the father of the author's wife was negotiating with the new owner of the land where the author had been living, and that an arrangement had been made to give the father time to relocate his family to their home island in the south. The Tribunal considered that while the author would need to share the available land with other members of his kin group, it would provide him and his family with access to sufficient resources to sustain themselves to an adequate level.

3 The Tribunal cited, inter alia, Manfred Nowak, *The U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kiehl, NP Engel, 2005), p. 128-29.

such regularity as to raise the prospect of death occurring to the author or his family members to a level rising beyond conjecture and surmise, let alone a risk that could be characterized as an arbitrary deprivation of life. Accordingly, there were not substantial grounds for believing that the author or any of his family members would be in danger of a violation of their rights under article 6 of the Covenant. The Tribunal also found that there was not a substantial risk that the author's rights under article 7 of the Covenant would be violated by his removal.

2.10. The author also provided a copy of the decision of the Supreme Court, which denied the author's appeal of the decision of the Tribunal on 20 July 2015. The Court considered, inter alia, that while the Republic of Kiribati undoubtedly faced challenges, the author would not, if returned there, face serious harm. Moreover, there was no evidence that the Government of the Republic of Kiribati was failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it could. The Supreme Court was also not persuaded that there was any risk that a substantial miscarriage of justice had occurred. Nevertheless, the Court did not rule out the possibility that environmental degradation resulting from climate change or other natural disasters could "create a pathway into the Refugee Convention or other protected person jurisdiction."

The complaint

3. The author claims that by removing him to Kiribati, New Zealand violated his right to life under the Covenant. Sea level rise in Kiribati has resulted in: (a) the scarcity of habitable space, which has in turn caused violent land disputes that endanger the author's life; and (b) environmental degradation, including saltwater contamination of the freshwater supply.

State party's observations on admissibility

4.1. In its observations dated 18 april 2016, the State party provides additional facts relating to the communication. In 2007, the author and his wife arrived in New Zealand. They had three children there, though none of the children are entitled to citizenship in New Zealand. The family remained in New Zealand without authorization after their residence permits had expired on 3 October 2010.

4.2. On 24 May 2012, with the assistance of legal counsel, the author filed a claim for recognition as a refugee and/or protected person. Under domestic law, Refugee and Protection Officers issue first instance decisions on such claims. Under the Immigration Act 2009, a person must be recognized as a refugee if she or he is a refugee within the meaning of the Refugee Convention. A person must be recognized as a protected person under the Covenant if there are substantial grounds for believing that the person would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Arbitrary deprivation of life has the same meaning under the Immigration Act 2009 as it does under the Covenant. The State party's decision makers have regard to the jurisprudence of the Committee. On 24 August 2012, the author's claim was denied by a Refugee and Protection Officer.

4.3. The Immigration and Protection Tribunal conducts *de novo* examination of appeals relating to claims for recognition as a refugee and/or a protected person. On 25 June 2013, the Tribunal denied the author's appeal of the negative decision of the Refugee and Protection Officer. On 26 november 2013, the High Court denied the author's application for leave to appeal the decision of the Tribunal. On 8 May 2014, the Court of Appeal denied the author's application for leave to appeal the decision of the High Court. On 20 July 2015, the Supreme Court denied the author's application for leave to appeal the decision of the Court of Appeal. All of the author's applications and appeals were made with the assistance of legal counsel.

4.4. On 15 september 2015, the author was detained and was served with a deportation order. On 16 september 2015, an immigration officer interviewed the author, in the presence of his counsel and with the assistance of an interpreter. The author completed a 28-page Record of Personal Circumstances form, which the immigration officer then evaluated through a cancellation assessment. Under domestic law, an immigration officer must perform a cancellation assessment if the individual concerned provides information concerning his or her personal circumstances, and the information is relevant to the State party's international obligations. The immigration officer assessing the author's case did not consider that his removal order should be cancel-

led. On 22 september 2015, the Minister of Immigration denied the author's request to cancel his removal. On 23 september 2015, the author was removed to Kiribati, and his family left shortly thereafter. They have not returned to New Zealand.

4.5. The State party considers that the communication is inadmissible because the author's implied claim under article 6 (1) of the Covenant is not sufficiently substantiated to establish a *prima facie* case. This is because, firstly, there is no evidence of actual or imminent harm to the author. In its decision on *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), the Committee found that for a person to claim to be a victim of a violation of a Covenant right, she or he "must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such effect is imminent." The Committee considered that the authors had failed to substantiate, for the purpose of admissibility, the alleged violation of their rights under the Covenant. In the present case, there is no evidence that the author faced an imminent risk of being arbitrarily deprived of his life when he was removed to Kiribati. Moreover, there is no evidence that the author faces such a risk. There is also no evidence that his situation is materially different from that of all other persons in Kiribati. The domestic authorities emphasized that their conclusions should not be read to mean that environmental degradation resulting from climate change could never create a pathway into protected person jurisdiction. The authorities considered, however, that the author and his family had not established such a pathway.

4.6. Secondly, the author's evidence contradicts his claim. His communication consists of two brief letters, and he appears to rely on the evidence that he presented to the Immigration and Protection Tribunal, as well as the decisions of the domestic authorities. The Tribunal considered a substantial amount of information and evidence from both the author and an expert concerning the effects of climate change and sea level rise on the people and geography of Kiribati. The Tribunal accepted the evidence, including the author's evidence, in its entirety. However, it found that there was no evidence that the author had faced or faced a real risk of suffering serious physical harm from violence linked to housing, land or property disputes. The Tribunal also found that there was no evidence to support the author's claim that he was unable to grow subsistence crops or obtain potable water in Kiribati. The author had claimed that it was difficult, not impossible, to grow crops as a result of saltwater intrusion onto the land. The Tribunal considered that there was no evidence establishing that the environmental conditions the author faced or was likely to face upon return to Kiribati were so parlous that his life would be jeopardized, or that he and his family would be unable to resume their prior subsistence life with dignity. The Tribunal accepted that States have positive duties to protect life from risks arising from known natural hazards, and that failure to do so may constitute an omission that falls afoul of article 6 (1) of the Covenant. However, the author could not point to any such act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 (1) of the Covenant; and he could not establish that there was at that time a sufficient degree of risk to his life or that of his family. The Tribunal concluded that the risk to the author from climate change fell well short of the threshold required to establish a substantial ground for believing that he and his family would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. In the Tribunal's words, the risk remained "firmly in the realm of conjecture or surmise." According to the Committee's jurisprudence, it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case.

4.7. The communication is also insufficiently substantiated because the author has not submitted any further evidence in addition to the evidence that has already been considered by the domestic authorities. The Immigration and Protection Tribunal accepted the evidence presented by the author. The Court of Appeal considered that the Tribunal's decision was well-structured, carefully reasoned and comprehensive. The High Court noted that in order for the author's application for leave to appeal to be granted, the author would have to present a seriously arguable case that the Tribunal's factual findings were incorrect, and that this would be difficult to meet this requirement because the Tribunal had not challenged the author's evidence. The domestic courts confirmed that the author had not established that he would suffer a violation of article 6 of the Covenant by

returning to Kiribati, and that the Tribunal's findings were therefore justified.

Author's comments on the State party's observations on admissibility

5. In his comments dated 25 July 2016, the author maintains that due to the lack of clean drinking water, he and his family have had "reasonably bad health issues" since returning to Kiribati in september 2015. One of the author's children suffered from a serious case of blood poisoning, which caused boils all over his body. The author and his family are also unable to grow crops. Before the Supreme Court of New Zealand issued its decision on the author's case in 2015, the author had provided to the Court new information, namely, the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. The Report indicated that Kiribati would face serious survival issues if the increase in global temperatures and sea level continued.

State party's observations on the merits

6.1. In its observations dated 16 August 2016, the State party considers that the communication is without merit, for the reasons it previously stated. The State party acknowledges that the right to life is the supreme right under the Covenant from which no derogation is permitted, and should not be interpreted narrowly. States parties are required to adopt positive measures to protect the right to life. However, the complainant has not provided evidence to substantiate his claim that he faces actual or imminent harm. In its jurisprudence, the Committee has found inadmissible claims based on hypothetical violations of Covenant rights that might occur in the future.[4] The Committee has also found inadmissible claims where the author lacks victim status due to a failure to demonstrate that either an act or omission of a State party has already adversely affected his or her enjoyment of the right in question, or that such effect is imminent.[5] In addition, the Committee found unsubstantiated the *non-refoulement* claim of an author who presented general allegations of a risk of arbitrary arrest and detention that could ultimately lead to torture and death, but who acknowledged that he had not experienced any direct threat to his life.[6]

6.2. In addition to reiterating its previous arguments, the State party considers that there is no evidence that the authors now face an imminent risk of being arbitrarily deprived of life following their return to Kiribati. The communication does not present a situation analogous to the facts of *Lewenhoff et al. v. Uruguay.*[7] In that case, the Committee determined that because further clarification of the case depended on information exclusively in the hands of the State party, the author's allegations were substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

Author's comments on the State party's observations on the merits

7.1. The author presented further comments on 29 december 2016. He claims that during the 2015 United Nations Climate Change Conference (COP 21), the State party endorsed the findings of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.[8] The Report describes a rise in sea level of at least 0.7 meters for developing countries in the Pacific Ocean, and the resulting loss of rainfall and incursion of salt water into underground freshwater lenses and aquifers. Thus, it appears that the State party has opened the door to accepting the legal concept of a climate change refugee in cases where an individual faces a risk of serious harm. For climate change refugees, the risk of serious harm arises from environmental factors indirectly caused by humans, rather than from violent acts.

7.2. The author faces an intermediate risk of serious harm in Kiribati, which is losing land mass

4 The State party cites *V.M.R.B. v. Canada* (CCPR/C/33/D/236/1987), para. 6.3.

5 The State party cites *Beydon v. France* (CCPR/C/85/D/1400/2005), para. 4.3.

6 The State party cites *Lan v. Australia* (CCPR/C/107/D/1957/2010), para. 8.4. For the purpose of comparison, the State party also cites *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), in which the Committee considered the authors' claims to be sufficiently substantiated and therefore admissible.

7 *Lewenhoff et al. v. Uruguay* (CCPR/C/OP/1 at 109 (1985)), para. 13.3.

8 The author provides a copy of a document issued by Climate & Development Knowledge Network, entitled "The IPCC's Fifth Assessment Report: What's in it for Small Island Developing States?"

and can be expected to survive as a country for 10 to 15 more years. The author appealed the decision of the Immigration and Protection Tribunal because he disagreed with the Tribunal's determination as to the timeframe within which serious harm to the author would occur. The author states that the expert report he provided to the Immigration and Protection Tribunal confirms his claims.

7.3. The author's life, along with the lives of his wife and children, will be at risk as the effects of climate change worsen. The evidence and compelling photographs provided by the climate change expert, John Corcoran, were largely ignored by the domestic authorities.

Issues and proceedings before the Committee

Consideration of admissibility

8.1. Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2. The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not currently being examined under another procedure of international investigation or settlement.

8.3. Noting that the State party has not contested the author's argument that he exhausted all available domestic remedies, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4. The Committee notes the State party's argument that the communication is inadmissible under article 2 of the Optional Protocol because the author has not sufficiently substantiated his claim that when he was removed to Kiribati, he faced an imminent risk of being arbitrarily deprived of his life. The Committee recalls its jurisprudence stating that a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected.[9] It is a matter of degree how concretely this requirement should be taken. However, any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent, basing his arguments for example on legislation in force or on a judicial or administrative decision or practice.[10] If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.[11] Individuals claiming to be victims of a violation by a State party of article 6 of the Covenant must demonstrate that the State party's actions resulted in a violation of their right to life, specific to the individuals, or presented an existing or imminent threat to their enjoyment of this right.[12]

8.5. The Committee notes, however, that the author's communication sought to prevent his imminent deportation from New Zealand to Kiribati. Accordingly, the question before the Committee is not whether he was, at the time of submission, a victim of a past violation of the Covenant, but rather whether he has substantiated the claim that he faced upon deportation a real risk of irreparable harm to his right to life. The Committee considers that in the context of attaining victim status in cases of deportation or extradition, the requirement of imminence primarily attaches to the decision to remove the individual, whereas the imminence of any anticipated harm in the receiving state influences the assessment of the real risk faced by the individual. The Committee notes in this connection that the author's claims relating to conditions on Tarawa at the time of his removal do not concern a hypothetical future harm, but a real predicament caused by lack of potable water and employment possibilities, and a threat of serious violence caused by land disputes.

9 See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5.

10 See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5; *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.3; *E.W. et al. v. the Netherlands* (CCPR/C/47/D/429/1990), para. 6.4; *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3.

11 See *Aumeeruddy-Cziffra v. Mauritius* (CCPR/C/OP/1 at 67 (1984)), para. 9.2.

12 See, inter alia, *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3; *Bordes and Temeharo v. France* (CCPR/C/57/D/645/1995), para. 5.5.

8.6. Based on the information the author presented to the domestic authorities and in his communication, the Committee considers that the author sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of the Republic of Kiribati and on the security situation in the islands, he faced as a result of the State party's decision to remove him to the Republic of Kiribati a real risk of impairment to his right to life under article 6 of the Covenant. Accordingly, the Committee considers that articles 1 and 2 of the Optional Protocol do not constitute an obstacle to the admissibility of the communication. The Committee therefore proceeds to examine the communication on its merits.

Consideration of the merits

9.1. The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2. The Committee notes the author's claim that by removing him to the Republic of Kiribati, the State party subjected him to a risk to his life in violation of article 6 of the Covenant, and that the State party's authorities did not properly assess the risk inherent in his removal.

9.3. The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal, that it cannot derive merely from the general conditions in the receiving State, except in the most extreme cases,[13] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[14] The obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be broader than the scope of the principle of *non-refoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status.[15] Thus, States parties must allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against *refoulement*.[16] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[17] The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that this assessment was clearly arbitrary or amounted to a manifest error or a denial of justice.[18]

9.4. The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.[19] The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.[20] States parties may be in violation of article 6 of the Covenant even if such

13 General comment No. 36 (2018) on article 6 of the Covenant on the right to life (CCPR/C/GC/36), para. 30.

14 See, inter alia, *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3.

15 General comment No. 36 (CCPR/C/GC/36), para. 31.

16 General comment No. 36 (CCPR/C/GC/36), para. 31.

17 See, inter alia, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

18 See, inter alia, *M.M. v. Denmark* (CCPR/C/125/D/2345/2014), para. 8.4; *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; see also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32) (2007).

19 General comment No. 36 (CCPR/C/GC/36), para. 3; see *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

20 See *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.5.

threats and situations do not result in the loss of life.[21] Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.[22]

9.5. The Committee also observes that it, in addition to regional human rights tribunals, have established that environmental degradation can compromise effective enjoyment of the right to life,[23] and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.[24]

9.6. In the present case, the Committee recalls that it must assess whether there was clear arbitrariness, error or injustice in the evaluation by the State party's authorities of the author's claim that when he was removed to the Republic of Kiribati he faced a real risk of a threat to his right to life under article 6 of the Covenant. The Committee observes that the State party thoroughly considered and accepted the author's statements and evidence as credible, and that it examined his claim for protection separately under both the Refugee Convention and the Covenant. The Committee notes that in their decisions, the Immigration and Protection Tribunal and the Supreme Court both allowed for the possibility that the effects of climate change or other natural disasters could provide a basis for protection. Although the Immigration and Protection Tribunal found the author to be entirely credible, and accepted the evidence he presented, the Tribunal considered that the evidence the author provided did not establish that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that: (a) the author had been in any land dispute in the past, or faced a real chance of being physically harmed in such a dispute in the future; (b) he would be unable to find land to provide accommodation for himself and his family; (c) he would be unable to grow food or access potable water; (d) he would face life-threatening environmental conditions; (e) his situation was materially different from that of every other resident of Kiribati; or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. The Tribunal observed that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National Adaptation Programme of Action submitted by Kiribati under the United Nations Framework Convention on Climate Change.

9.7. In assessing whether the State party's authorities provided the author with an adequate and individualized assessment of the risk of a threat to his right to life, the Committee first notes the author's claim that the increasing scarcity of habitable land on Tarawa has led to violent land disputes that have produced fatalities. In this connection, the Committee considers that a general situation of violence is only of sufficient intensity to create a real risk of irreparable harm under articles 6 or 7 of the Covenant in the most extreme cases, where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return,[25] or where the individual in question is in a

21 See, inter alia, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

22 General comment No. 36 (CCPR/C/GC/36), para. 62.

23 *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.4 ; Inter-American Court of Human Rights, *Advisory opinion OC-23/17* of 15 November 2017 on the environment and human rights, series A, No. 23, para. 47; *Kawas Fernández v. Honduras*, judgment of 3 April 2009, series C, No. 196, para. 148. See also African Commission on Human and People's Rights, general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4), para. 3 (States' responsibilities to protect life "extend to preventive steps to preserve and protect the natural environment, and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.") See also European Court of Human Rights, application Nos. 54414/13 and 54264/15, *Cordella and Others v. Italy*, judgment of 24 January 2019, para. 157 (serious environmental harm may affect individuals' well-being and deprive them of the enjoyment of their domicile, so as to compromise their right to private life).

24 See European Court of Human Rights, *M. Özel and others v. Turkey*, judgment of 17 November 2015, paras. 170, 171 and 200; *Budayeva and others v. Russia*, judgment of 20 March 2008, paras. 128–130, 133 and 159; *Öneryildiz v. Turkey*, judgment of 30 November 2004, paras. 71, 89, 90 and 118.

25 Cf., European Court of Human Rights, *Sufi and Elmi v. United Kingdom*, application Nos. 8319/07 and

particularly vulnerable situation.[26] In assessing the author's circumstances, the Committee notes the absence of a situation of general conflict in the Republic of Kiribati. It observes that the author refers to sporadic incidents of violence between land claimants that have led to an unspecified number of casualties, and notes the author's statement before the domestic authorities that he had never been involved in such a land dispute. The Committee also notes the Tribunal's statement that the author appeared to accept that he was alleging not a risk of harm specific to him, but rather a general risk faced by all individuals in Kiribati. The Committee further notes the absence of information from the author about whether protection from the State would suffice to address the risk of harm from non-state actors who engage in acts of violence during land disputes. While the Committee does not dispute the evidence proffered by the author, it considers that the author has not demonstrated clear arbitrariness or error in the domestic authorities' assessment as to whether he faced a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati.

9.8. The Committee also notes the author's claims before the domestic authorities that he would be seriously harmed by the lack of access to potable water on Tarawa, as fresh water lenses had been depleted due to saltwater contamination produced by sea level rise. In this regard, the Committee notes that according to the report and testimony of the climate change researcher John Corcoran, 60 per cent of the residents of South Tarawa obtained fresh water from rationed supplies provided by the public utilities board. The Committee notes the findings of the domestic authorities that there was no evidence that the author would lack access to potable water in the Republic of Kiribati. While recognizing the hardship that may be caused by water rationing, the Committee notes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.

9.9. The Committee further notes the author's claim before the domestic authorities that his right to life had been violated because he had been deprived of his means of subsistence, as his crops had been destroyed due to salt deposits on the ground. The Committee observes the finding of the domestic authorities that, while the author stated that it was difficult to grow crops, it was not impossible. The Committee recognizes that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. However, the Committee notes the lack of information provided by the author on alternative sources of employment and on the availability of financial assistance to meet basic humanitarian needs in the Republic of Kiribati. The Committee further notes the Tribunal's observation that most nutritious crops remained available in the Republic of Kiribati. The information made available to the Committee does not indicate that when the author's removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity. The Committee therefore considers that the author has not established that the assessment of the domestic authorities was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.10. Finally, the Committee notes the author's assertion that he faces a risk to his right to life because of overpopulation and frequent and increasingly intense flooding and breaches of sea walls. The Committee also notes the author's argument that the State party's courts erred in determining the timeframe within which serious harm to the author would occur in the Republic of Kiribati, and did not give sufficient weight to the expert testimony of the climate change researcher. The Committee notes that in his comments submitted in 2016, the author asserted that the Republic of Kiribati would become uninhabitable within 10 to 15 years.

9.11. The Committee takes note of the observation of the Immigration and Protection Tribunal that climate change-induced harm can occur through sudden-onset events and slow-onset pro-

11449/07, judgment of 28 June 2011, paras. 218, 241.

26 See *Jasin v. Denmark* (CCPR/C/114/D/2360/2014), paras. 8.8, 8.9; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 8.3.

cesses. Reports indicate that sudden-onset events are discrete occurrences that have an immediate and obvious impact over a period of hours or days, while slow-onset effects may have a gradual, adverse impact on livelihoods and resources over a period of months to years. Both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea level rise, salinization, and land degradation) can propel cross-border movement of individuals seeking protection from climate change-related harm.[27] The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

9.12. In the present case, the Committee accepts the author's claim that sea level rise is likely to render the Republic of Kiribati uninhabitable. However, it notes that the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population. The Committee notes that the State party's authorities thoroughly examined this issue and found that the Republic of Kiribati was taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms. Based on the information made available to it, the Committee is not in a position to conclude that the assessment of the domestic authorities that the measures by taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.13. In the light of these findings, the Committee considers that the State party's courts provided the author with an individualized assessment of his need for protection and took note of all of the elements provided by the author when evaluating the risk he faced when the State party removed him to the Republic of Kiribati in 2015, including the prevailing conditions in Kiribati, the foreseen risks to the author and the other inhabitants of the islands, the time left for the Kiribati authorities and the international community to intervene and the efforts already underway to address the very serious situation of the islands. The Committee considers that while the author disagrees with the factual conclusions of the State party, the information made available to it does not demonstrate that the conduct of the judicial proceedings in the author's case was clearly arbitrary or amounted to a manifest error or denial of justice, or that the courts otherwise violated their obligation of independence and impartiality.

9.14. Without prejudice to the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in the Republic of Kiribati and new and updated data on the effects of climate change and rising sea-levels thereupon, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not permit it to conclude that the author's removal to the Republic of Kiribati violated his rights under article 6 (1) of the Covenant.

Annex 1

Individual opinion of Committee member Vasilka Sancin (dissenting)

1. I regret that I cannot join the majority in finding that the Committee is not in a position to conclude that the State Party's assessment that the measures taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or manifestly erroneous, or amounted to a denial of justice (paras. 9.12 and 9.13), particularly since, in my opinion, the State Party failed to present evidence of proper assessment of author's and his dependent children's access to safe drinking water in Kiribati.

2. The author argued, among others, that by removing him and his family to Kiribati, New Zealand violated Article 6(1) of the Covenant, because they have no access to safe drinking wa-

27 See Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), para. 18 (h), (i), (l).

ter, which poses an imminent threat to their lives. Evidence, uncontested by the State Party, can be found in paras. 2.4, 2.6 and 5 of the views.
3. The State Party to the contrary concluded that there is no evidence to support author's contention that he was unable to obtain potable water and that there is no evidence that he had no access to potable water (para. 2.8). My concern arises from the fact that the notion of 'potable water' should not be equated with 'safe drinking water'. Water can be designated as potable, while containing microorganisms dangerous for health, particularly for children (all three of the author's dependent children were born in New Zealand and were thus never exposed to water conditions in Kiribati).
4. The Committee (para. 9.6) repeats the State Party's argument that although the Tribunal found the author to be entirely credible, and accepted the presented evidence, it considered as unestablished that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that: … (c) he would be unable to grow food or access potable water; … or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. These conclusions were based on the fact that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National Adaptation Programme of Action. In para. 9.8, the Committee, while recognizing the hardship that may be caused by water rationing, concludes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.
5. However, expert reports, inter alia, the United Nations Special Rapporteur on the human right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, after her mission to Kiribati from 25 July 2012[28], warned that in Kiribati, the National Development Strategy 2003-2007 and the National Development Plan 2008-2011 contain policies and goals of direct relevance to the water, but that the 2008 National Water Resources Policy and a 2010 National Sanitation Policy's priorities set for the first 3 years have yet to be implemented. In these circumstances, it is my opinion that it falls on the State Party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards.
6. Considering all of the above, I am not persuaded that the author's claim concerning the lack of access to safe drinking water is not substantiated for finding that the State Party's assessment of author's and his family situation was clearly arbitrary or manifestly erroneous. This is why, in the circumstances of the present case, I disagree with the Committee's conclusion that the facts before it do not permit it to conclude that the author's removal to Kiribati violated his rights under article 6 (1) of the Covenant.

Annex 2

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)
1. Upon carefully examining the facts of the instant communication, I am of the considered view that the author presents a case that reveals a violation and consequently, it should be admissible. The facts before the Committee re-emphasise the need to employ a human-sensitive approach to human rights issues. Accordingly, I disagree with the position reached by the rest of the Committee. The State Party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life – within the scope of Article 6 of the Covenant. The conditions of life laid out by the author – resulting from climate change in the Republic of Kiribati, are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention. Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change, with the approach that seeks to uphold the sanctity of human life.
2. The author presents the evidence, which is not disputed by neither the State Party, nor the rest of the Committee, that sea level rise in Kiribati has

28 https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12389&LangID=E (accessed 12 December 2019).

resulted in: the scarcity of habitable space causing life endangering violent land disputes; severe environmental degradation resulting in contamination of water supply, and the destruction of food crops; yet the author's family relied largely on subsistence agriculture and fishing. Since removal to Kiribati, the author and his family have been unable to grow crops. Furthermore, the land in Tarawa (the home village of the author and his family) has reportedly gotten significantly flooded; with land being submerged up-to knee deep in king tides. Moreover, beyond stories of children getting diarrhoea and dying because of the poor quality of drinking water, the author and his family on return to Kiribati, have had bad health issues – with one of his children suffering from a serious case of blood poisoning, causing boils all over the body.

3. Whereas the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases, the threshold should not be too high and unreasonable. Even as the jurisprudence of the Committee emphasises a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists; it has been critical to consider all relevant facts and circumstances, including the general human rights situation in the author's country of origin.[29] As a necessary corollary to the high threshold, the Committee has been careful to counterbalance a potentially unreachable standard, with the need to consider all relevant facts and circumstances, which comprise *among other conditions* – the grave situation in the author's country.

4. It is the Committee's position that the right to life includes the right of individuals to enjoy a life with dignity, free from acts or omissions that are expected to cause unnatural or premature death.[30] It is also the Committee's position that environmental degradation and climate change constitute extremely serious threats to the ability of both present and future generations to enjoy the right to life.[31] In recognition of this reality, States have been obligated to preserve the environment and protect it against harm, pollution and climate change.[32]

5. In my view, the author faces a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of the conditions in Kiribati. The considerable difficulty in accessing fresh water because of the environmental conditions, should be enough to reach the threshold of risk, without being a complete lack of fresh water. There is evident significant difficulty to grow crops. Moreover, even if deaths are not occurring with regularity on account of the conditions (as articulated by the Tribunal), it should not mean that the threshold has not been reached.[33] It would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable; in order to consider the threshold of risk as met. It is the standard upheld in this Committee, that threats to life can be a violation of the right, even if they do not result in the loss of life.[34] It is should be sufficient that the child of the author has already suffered significant health hazards on account of the environmental conditions. It is enough that the author and his family are already facing significant difficulty in growing crops and resorting to the life of subsistence agriculture on which they were largely dependent. Considering the author's situation and his family, balanced with all the facts and circumstances of the situation in the author's country of origin, reveals a livelihood short of the dignity that the Convention seeks to protect.

6. Lastly, while it is laudable that Kiribati is taking adaptive measures to reduce the existing vulnerabilities and address the evils of climate change, it is clear that the situation of life continues to be inconsistent with the standards of dignity for the author, as required under the Covenant. The fact that this is a reality for many others in the country, does not make it any more dignified for the persons living in such conditions. New Zealand's action is more like forcing a drowning person back into a sinking vessel, with the "justification" that after all there are other voyagers on board. Even as Kiribati does what it takes to address the conditions; for as long as they remain dire, the life and dignity of persons remains at risk.

29 B.D.K. v. Canada (CCPR/C/125/D/3041/2017), para. 7.3; K. v. Denmark (CCPR/C/114/D/2393/2014), para. 7.3.

30 General Comment No. 36 (CCPR/C/GC/36), para. 3.

31 General Comment No. 36 (CCPR/C/GC/36), para. 62.

32 Ibid.

33 See, p. 5, of the Committee's decision, para. 2.9.

34 See p. 11 of the Committee's decision, para. 9.4.

NOOT

1. Op 7 januari 2020 publiceerde het Mensenrechtencomité een beslissing inzake een klacht tegen Nieuw-Zeeland op grond van het recht op leven zoals beschermd in art. 6 van het Internationaal Verdrag inzake burgerrechten en politieke rechten (hierna: IVBPR). De klager, Teitiota, was met zijn gezin van het eiland Kiribati naar Nieuw-Zeeland gevlucht. Gezien de effecten van klimaatverandering en de stijging van het waterpeil op het eiland zou, aldus Teitiota, de situatie daar voor hem en zijn gezin levensbedreigend zijn geworden. De klacht werd afgewezen omdat volgens het Mensenrechtencomité in dit individuele geval geen sprake was van schending van het recht op leven. Wel erkent het Mensenrechtencomité in het algemeen dat door de gevolgen van klimaatverandering het leven van personen bij uitzetting in gevaar kan worden gebracht en dat staten hier dan verantwoordelijk voor kunnen worden gehouden. De beslissing van het Mensenrechtencomité is niet unaniem. Twee leden betogen in hun 'dissenting opinion' dat in dit specifieke geval wel sprake was van een schending. Na een bespreking van de uitspraak zelf, ga ik in deze noot in op de vraag wat deze beslissing van het Mensenrechtencomité toevoegt aan het huidige Europese juridisch kader.
2. Het besluit van het Mensenrechtencomité van de Verenigde Naties betreft de klacht van Teitiota uit 2016 tegen diens uitzetting uit Nieuw-Zeeland. Teitiota is een onderdaan van Kiribati, een eilandrepubliek in de Stille Oceaan. Al jaren kampen de inwoners van dit eiland met het stijgende zeewater ten gevolge van de klimaatveranderingen. Het verzoek van Teitiota om als klimaatvluchteling te worden erkend, werd door Nieuw-Zeeland afgewezen en hij werd met zijn gezin in september 2015 uitgezet. Volgens Teitiota schond Nieuw-Zeeland door de uitzetting zijn recht op leven, beschermd in art. 6 IVBPR. Door het stijgende zeewater zou in Kiribati gebrek zijn aan bewoonbare ruimte, met als gevolg gewelddadige conflicten over landbezit waardoor het leven van klager in gevaar zou zijn. Ook zou het milieu ernstig zijn aangetast, waaronder vervuiling van het drinkwater met het zoute zeewater.
3. Zijn asielaanvraag werd als ongegrond door de vreemdelingenrechtbank (Immigration and Protection Tribunal) van Nieuw-Zeeland afgewezen. Volgens deze rechtbank had klager onvoldoende onderbouwd dat bij terugkeer naar Kiribati, zijn leven, of dat van zijn gezin, persoonlijk in gevaar zou komen. Het Mensenrechtencomité volgt dit oordeel en wijst de individuele klacht van Teitiota af. Het belangrijkste argument voor deze afwijzing is gebaseerd op een claim van de klager zelf. Deze had namelijk in de procedure aangevoerd dat Kiribati in een tijdspanne van tien tot vijftien jaar onbewoonbaar zou worden. Het is een beetje cynisch dat het Mensenrechtencomité juist hieruit afleidt dat de autoriteiten van de Republiek Kiribati dus nog tijd hebben om, met behulp van de internationale gemeenschap, maatregelen te nemen om de bevolking te beschermen en waar nodig deze te herplaatsen. Volgens het Comité zouden deze omstandigheden ook voldoende zijn meegewogen tijdens de juridische procedure in Nieuw-Zeeland. Het Mensenrechtencomité concludeert dat deze nationale procedure zorgvuldig is verlopen en er geen sprake was van 'manifest error' of 'denial of justice'.
4. Ondanks de afwijzing van de individuele klacht, heeft deze beslissing wel algemene betekenis voor de bescherming van klimaatvluchtelingen. In het besluit overweegt het Comité namelijk expliciet dat staten verantwoordelijk blijven om in toekomstige zaken de actuele situatie in Kiribati te onderzoeken. Het Comité stelt vast dat zonder 'robuuste nationale en internationale inspanningen', het recht op leven van individuen in gevaar kan zijn wegens de effecten van klimaatverandering individuen kunnen blootstellen aan schending van het recht op leven, wat de non-refoulement verplichting van terugzendende staten in het leven roept ('hereby triggering the *non-refoulement* obligations of sending states', par. 9.11). Bovendien, zo stelt het Comité, nu het risico dat een geheel land onder water komt te liggen een dusdanig extreem risico is, kunnen de levensomstandigheden in zo een land al 'voordat zich dit risico heeft gerealiseerd' onverenigbaar zijn met het recht op leven in waardigheid. De algemene betekenis van de uitspraak van het Mensenrechtencomité is dan ook dat hierin de gevolgen van klimaatverandering voor de bescherming van het individuele recht op waardigheid, zoals beschermd in het IVBPR, en het non-refoulementbeginsel worden erkend.
5. In hun dissenting opinions stellen de leden Vasilka Sancin en Duncan Laki Muhumuza beiden

dat in het geval Teitiota en zijn gezin al sprake was van een levensbedreigende situatie, met name omdat was vastgesteld zij geen of onvoldoende toegang hebben tot drinkbaar water. Muhumuza is het verder oneens met de zware bewijslast die de meerderheid van het Comité bij de klager legt om aan te tonen dat zijn leven bij uitzetting in gevaar is. Hij hekelt daarbij de vaststelling van Nieuw-Zeeland dat andere bewoners van Kiribati ook gevaar lopen. Hij vergelijkt dit met het terugsturen van een verdrinkend persoon in een zinkend schip met de rechtvaardiging dat er immers ook nog andere personen aan boord zijn (par. 6: 'like forcing a drowning person back into a sinking vessel, with the "justification" that after all there are other voyagers on board').

6. De besluiten van het Mensenrechtencomité zijn, anders dan uitspraken van het Europees Hof voor de Rechten van de Mens (EHRM), niet juridisch bindend. Staten die het klachtrecht hebben erkend onder het IVBPR zijn niet verplicht de beslissingen van het Comité op te volgen. Desondanks kan worden betoogd dat van de uitspraken wel degelijk een bindende werking uitgaat. Nu het IVBPR zelf bindend is, dienen de staten die het hebben geratificeerd, waaronder Nederland, op grond van de beginselen van internationaal recht zoals neergelegd in het Weens Verdragenverdrag, het in 'good faith' uit te voeren. Dit betekent, zoals het Mensenrechtencomité eerder heeft bepaald, dat diens uitspraken over individuele zaken de kenmerken van een rechterlijk besluit hebben (General Comment nr. 33 inzake *The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* van 5 november 2008). Staten dienen daarom alle middelen die in hun macht liggen te gebruiken om daaraan uitvoering te geven. Dit geldt dus ook voor de hierboven genoemde vaststelling van het Comité ten aanzien van de onderzoekplicht respectievelijk verantwoordelijkheid van staten bij uitzetting van vreemdelingen naar gebieden waar hun leven in gevaar is vanwege de gevolgen van klimaatverandering.

7. Welke betekenis heeft deze beslissing nu voor het Europese, en daarmee, Nederlandse asielrecht? De EU Kwalificatierichtlijn (Richtlijn 2011/95/EU) biedt kort gezegd twee vormen van internationale bescherming: de vluchtelingenstatus en subsidiaire bescherming. Voor vluchtelingschap geldt een restrictieve definitie, neergelegd in art. 1 VN-vluchtelingenverdrag en art. 9 Kwalificatierichtlijn. Een van de elementen van deze definitie is dat sprake moet zijn van 'vervolging' voor een specifieke 'vervolgingsgrond', zoals politieke overtuiging, ras of geloof. Voor klimaatvluchtelingen is hiervan geen sprake: zij vluchten niet voor vervolging door de overheid of andere actoren, maar voor de natuur. Daarom wordt algemeen aangenomen dat vluchtelingenstatus zoals bedoeld in het Vluchtelingenverdrag geen bescherming biedt voor klimaatvluchtelingen.

8. Klimaatvluchtelingen komen mogelijk wel in aanmerking voor subsidiaire bescherming. Deze bescherming is gebaseerd op het algemene non-refoulementbeginsel, zoals neergelegd in art. 3 EVRM en art. 4 EU Handvest. Op grond hiervan komt een persoon voor subsidiaire bescherming in aanmerking wanneer hij of zij, wanneer teruggezonden, een reëel risico loopt op 'ernstige schade' die bestaat uit ernstige en individuele bedreiging van leven of persoon als gevolg van willekeurig geweld in het kader van een internationaal of binnenlands of gewapende conflict. Hierbij is individueel gericht optreden tegen betrokkene niet vereist. Immers, door zowel het EHRM als het Hof van Justitie van de Europese Unie (HvJ EU) is vastgesteld dat oorlogsvluchtelingen, bijvoorbeeld uit Syrië of Sudan, beschermd moeten worden als sprake is van een uitzonderlijke situatie van 'algemeen' of 'willekeurig' geweld als gevolg van een (inter)nationaal gewapend conflict.

9. Op basis van deze aan art. 3 EVRM gerelateerde grond is een bijzondere status van subsidiaire bescherming neergelegd in art. 15 sub c Kwalificatierichtlijn. Deze is van toepassing 'bij ernstige en individuele bedreiging van het leven of de persoon van een burger als gevolg van willekeurig geweld in het kader van een internationaal of binnenlands gewapend conflict'. In de *Elgafaji*-uitspraak van 17 februari 2009 (C-465/07, ECLI:EU:C:2009:94, «JV» 2009/111), heeft het HvJ EU het individualiseringsvereiste in deze definitie genuanceerd. Een persoon komt ook voor subsidiaire bescherming in aanmerking wanneer de mate van het willekeurig geweld dermate hoog is dat louter door de aanwezigheid aldaar een individu een reëel risico op die bedreiging loopt. Op basis van de definitie in art. 15 moet, om in aanmerking te komen voor subsidiaire bescherming, het genoemde risico voortvloeien uit een

internationaal of binnenlands gewapend conflict. De Kwalificatierichtlijn biedt dus geen rechtstreekse bescherming aan individuen die op de vlucht zijn voor de gevolgen van klimaatverandering. Wel kan, wanneer deze gevolgen, zoals droogte, gebrek aan voedsel of bewoonbare grond, tot binnenlands of internationaal geweld leiden, dit indirect aanleiding zijn voor de status van subsidiaire bescherming.

10. Art. 3 EVRM biedt echter ook, los van geweldsituaties, ruimte voor bescherming van 'klimaatvluchtelingen', bijvoorbeeld bij terugzending naar een gebied waar sprake is van mensonwaardige situaties gerelateerd aan sociaal-economische of humanitaire omstandigheden. De algemene toets die het EHRM in het kader van sociaal-economische of humanitaire omstandigheden hanteert, is echter zeer streng en houdt in dat sprake moet zijn van 'zeer uitzonderlijke omstandigheden of dwingende redenen' (exceptional circumstances). Het EHRM formuleerde deze toets in de uitspraak van 27 mei 2008 (26565/05, «JV» 2008/266, m.nt. Battjes (*N/het Verenigd Koninkrijk*)), inzake de afwijzing van een asielverzoek van een aidspatiënt die was gebaseerd op het gebrek aan medische zorg en ondersteuning in Oeganda. Het EHRM wees de klacht op grond van art. 3 EVRM af omdat geen sprake was van uitzonderlijke omstandigheden. In de uitspraak van 28 juni 2011 (8319/07 en 11449/07, «JV» 2011/332, m.nt. Battjes en Slingenberg (*Sufi en Elmi/het Verenigd Koninkrijk*)) maakt het EHRM duidelijk dat deze strenge toets ook van toepassing is wanneer in het land van herkomst sprake is van een humanitaire crisis door armoede of doordat staten onvoldoende middelen hebben om op te treden tegen de gevolgen van natuurfenomenen zoals droogte. Echter, waar deze slechte omstandigheden in het bijzonder ('predominately') het gevolg zijn van het handelen van de overheid of van strijdende partijen: dan moet volgens het EHRM weer een lichtere toets worden toegepast. In de *Sufi en Elmi*-zaak was dit het geval: de humanitaire crisis in Somalië was niet alleen ontstaan door droogte, maar mede het gevolg van het feit dat milities humanitaire hulp blokkeerden. Het EHRM stelde dan ook dat in dit geval bij toetsing aan art. 3 EVRM niet de eis van 'exceptional circumstances' kon worden toegepast. Het EHRM verwees daarbij naar de eerdere uitspraak *M.S.S.* t. *België en Griekenland* (21 januari 2011, 30696/09, «JV» 2011/68, m.nt. Battjes). Hierin paste het Hof ook een lichtere maatstaf toe, omdat sprake was van 'onverschillig' optreden van de Griekse autoriteiten bij de opvang van asielzoekers. Op basis van art. 3 EVRM kan uitzetting dus zijn verboden naar landen waar door de gevolgen van klimaatverandering, sprake is van een ernstige humanitaire crisis. Dit is echter alleen het geval bij 'zeer uitzonderlijke omstandigheden of dwingende redenen', tenzij de crisis is veroorzaakt of verergerd door bewust handelen of nalaten van de overheid of strijdende actoren in het betreffende gebied. Het handelen van overheden kan dus van belang zijn bij de vraag of klimaatvluchtelingen recht hebben op asiel.

11. Samengevat: het VN Mensenrechtencomité heeft met zijn besluit erkend dat uitzetting van asielzoekers naar landen waar klimaatverandering tot levensbedreigende situaties heeft geleid, in strijd kan zijn met het non-refoulementbeginsel. Ook heeft het vastgesteld dat dergelijke levensbedreigende situaties al kunnen ontstaan voordat het risico van de gevolgen van de klimaatverandering, zoals overstroming, zich voordoet. In die zin kan het besluit, zoals Amnesty International (Amnesty International, *UN landmark case for people displaced by climate change*, 20 januari 2020) terecht rapporteerde, als een 'landmark case' worden gezien. Tegelijkertijd legt het Mensenrechtencomité met de conclusie dat in het onderhavige geval 'nog' geen sprake is van een levensbedreigende situatie, de lat bij de vaststelling van een dergelijk risico wel erg hoog. Met de vaststelling dat de autoriteiten van Kiribati, samen met de internationale gemeenschap, nog tien tot vijftien jaar hebben om de gevolgen van stijgend zeewater te bestrijden, wordt de bewijslast in feite geheel bij de asielzoeker gelegd. Deze moet dan aantonen dat de autoriteiten, al dan niet samen met de internationale gemeenschap, te weinig dan wel te laat actie ondernemen om het leven van betrokkenen veilig te stellen. Voor het Europese en daarmee Nederlandse recht, lijkt de onderhavige uitspraak tot nu toe van minder belang. De *Sufi en Elmi*-uitspraak van het EHRM op basis van 3 EVRM, laat zien dat 'klimaatgevolgen', zij het in zeer uitzonderlijke omstandigheden of bij dwingende redenen, aanleiding kunnen geven tot verbod van uitzetting en daarmee het bieden van een verblijfstatus. Wanneer de crisis voornamelijk is ontstaan door het bewust handelen of nalaten van de overheid

of andere actoren in het betreffende gebied, geldt zelfs een lichtere toets. De subsidiaire bescherming van art. 15 sub c Kwalificatierichtlijn is slechts relevant bij geweldgerelateerde gevolgen van klimaatverandering.
12. Tot slot: inmiddels wordt de verantwoordelijkheid van de internationale gemeenschap ten aanzien van klimaatvluchtelingen steeds meer erkend, zo ook in de Global Compact for Migration (Global Compact for Migration, *Global Compact for Safe, Orderly and Regular Migration*, 13 juli 2018) zoals door de VN-staten in 2018 vastgesteld. In de verklaring roepen de staten op tot samenwerking en informatie-uitwisseling om migratie ten gevolge van klimaatverandering beter te begrijpen en te kunnen voorspellen, en tegelijkertijd de grondrechten van alle migranten te respecteren, te beschermen en te verwezenlijken. De staten noemen de noodzaak om humanitaire hulp te bieden aan hen die op korte of lange termijn door natuurrampen worden geraakt en roepen op tot een gezamenlijke aanpak van de gevolgen van klimaatverandering. De Global Compact zegt echter niets over juridische bescherming van klimaatvluchtelingen. De Parlementaire Vergadering van de Raad van Europa doet dit wel, zij het voorzichtig in een in oktober aangenomen, niet-bindende resolutie (Resolutie 2307 (2019) inzake een juridische status voor klimaatvluchtelingen). Hierin wordt allereerst onderstreept dat de afwezigheid van een juridisch bindende definitie van 'klimaatvluchtelingen' niet de mogelijkheid uitsluit om specifiek beleid te ontwikkelen ter bescherming van mensen die op de vlucht zijn voor de gevolgen van klimaatverandering. Ook wordt in de resolutie internationale samenwerking en coördinatie bepleit met betrekking tot preventie en aanpak van klimaatgerelateerde rampen en de migratie die hierdoor wordt veroorzaakt. Vervolgens roept de resolutie op om in de nationale asielsystemen en in internationaal recht, bescherming te ontwikkelen voor mensen die op de vlucht zijn voor klimaatveranderingen op lange termijn in hun land. Volgens de resolutie hebben de 'geïndustrialiseerde' staten van de Raad van Europa daarbij een bijzondere verantwoordelijkheid, vooral met betrekking tot landen van het globale zuiden, die de gevolgen dragen van 'man-made' klimaatwijzigingen. Daarom dienen deze staten 'geschikt' asiel te bieden aan klimaatvluchtelingen. Op internationaal niveau vormt zich dus steeds meer het besef van een gezamenlijke verantwoordelijkheid voor de bescherming van klimaatvluchtelingen, echter zonder daaraan nog duidelijke juridische verplichtingen te willen verbinden.

Deze annotatie is een bewerking van een eerder verschenen verblijfblog van de auteur (11 maart 2020, http://verblijfblog.nl/).

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Naturalisatie; frauduleus verkregen echt paspoort, identiteit en nationaliteit niet aangetoond.

Afdeling bestuursrechtspraak van de Raad van State
22 januari 2020, 201904503/1/V6,
ECLI:NL:RVS:2020:197
(mr. Bijloos)

Naturalisatie. Nigeria. Identiteit en nationaliteit, vaststelling van. Fraude. Bewijsrecht. Taalanalyse. Onderzoeksplicht. Reisdocumenten.

[RWN art. 9; Awb art. 3:9; BvvN art. 31]

De SvJ&V heeft terecht gesteld dat uit het rapport van Bureau Documenten is gebleken dat het door A. overgelegde paspoort met aan zekerheid grenzende waarschijnlijkheid frauduleus is verkregen en dat niet kan worden vastgesteld of het paspoort bevoegd is opgemaakt en afgegeven en of het paspoort inhoudelijk juist is. A. heeft aangevoerd dat hij in Sierra Leone is geweest en daar een paspoort heeft aangevraagd en verkregen. Hij heeft ten bewijze daarvan een tekening gemaakt van het kantoor waar hij het paspoort heeft aangevraagd. Hiermee heeft A. niet aannemelijk gemaakt dat hij daar daadwerkelijk is geweest. Uit het in het asieldossier gevoegde rapport 'Herkomstanalyse' blijkt dat op verzoek van de vreemdelingenpolitie een taalanalyse is gemaakt. Van deze taalanalyse is een bandopname gemaakt. Hieruit blijkt dat A. is te herleiden tot de